

SENATE BILL 4036
By Kilby

AN ACT relative to the levy of a privilege tax on the occupancy of any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourist camp, tourist courts, tourist cabins, campground, motel or any place in which rooms, lodgings or accommodations are furnished for transients for a consideration in Morgan County.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. For the purpose of this Act:

- (a) "Clerk" means the county clerk of Morgan County, Tennessee.
- (b) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.
- (c) "County" means Morgan County, Tennessee.
- (d) "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, bed & breakfast, recreational vehicle park, campground, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.
- (e) "Occupancy" means the use or the possession, or the right to the use or possession of any room, lodgings or accommodations in any hotel.
- (f) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business

trust, receiver, trustee, syndicate, governmental unit other than the United States or any of its agencies, or any other group or combination acting as a unit.

(g) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days.

(h) "Operator" means the person operating the hotel, whether as owner, lessee or otherwise, and shall include governmental entities.

SECTION 2. Morgan County is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient, in the amount of five percent (5%) of the rate charged by the operator. The tax imposed is a privilege tax upon the transient occupying such room or other accommodation and is to be collected and distributed as herein provided. Such tax shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

SECTION 3. The proceeds received by the county from the tax shall be designated and used for:

(1) One hundred percent (100%) for the promotion and support of tourism in the county.

SECTION 4.

(a) Such tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of his or her hotel and to be given directly or transmitted to the transient and shall be collected by such operator from the transient and transmitted to Morgan County.

(b) When a person has maintained occupancy for thirty (30) continuous days, that person shall receive from the operator a refund or credit for the tax previously collected from or charged to him or her, and the operator shall receive credit for the amount of such tax if previously paid or reported to the county.

SECTION 5.

- (a) The tax levied shall be remitted by all operators who lease, rent or charge for any rooms or spaces in hotels within the county, to the county clerk or such other officer as may by resolution be charged with the duty of collecting thereof, said tax to be remitted to such officer no later than the twentieth (20th) day of each month for the preceding month. The operator is hereby required to collect said tax from the transient at the time of the presentation of the invoice for occupancy whether prior to, during or after the occupancy, as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the county entitled to such tax shall be that of the operator.
- (b) For the purpose of compensating the operator in accounting for remitting the tax levied by these sections, the operator shall be allowed two percent (2%) of the amount of tax due and accounted for and remitted to the clerk in the form of a deduction when such operator is submitting his or her report and paying the amount due by such operator, provided, the amount due was not delinquent at the time of payment.

SECTION 6.

(a) The clerk or other authorized collector of the tax shall be responsible for the collection of said tax and shall place the proceeds of such tax in accounts for the purposes stated herein. A monthly tax return shall be filed under oath with the clerk by the operator with such number of copies thereof as the clerk may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the clerk and approved by the county legislative body prior to use. The clerk shall audit each operator in the county at least once per year and shall report on the audits made on a quarterly basis to the county legislative body.

(b) The county legislative body is hereby authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this Act, including the form for such reports.

SECTION 7. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

SECTION 8. Taxes collected by an operator which are not remitted to the county clerk on or before the due dates shall be delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and in addition for a penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax therein required to be remitted. Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is hereby declared to be unlawful and shall constitute a misdemeanor punishable upon conviction of a fine not in the excess of fifty dollars (\$50.00).

SECTION 9. It shall be the duty of every operator liable for the collection and payment to the county of any tax imposed by this Act to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the county, which records the county clerk may have the right to inspect at all reasonable times.

SECTION 10.

(a) The county clerk, in administering and enforcing the provisions of this Act, shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Tennessee Code Annotated, Title 67, or otherwise provided by law for the county clerks.

(b) For his or her services in administering and enforcing the provisions of this Act, the county clerk shall be entitled to retain a commission of five percent (5%) of the taxes so collected.

(c) Upon any claim of illegal assessment and collection, the taxpayer shall have the remedies provided by Tennessee Code Annotated, Title 67, it being the intent of this Act that the provisions of law which apply to the recovery of state taxes illegally

assessed and collected under the authority of this Act; and provided further, the county clerk shall possess those powers and duties as provided in Tennessee Code Annotated, Section 67-1-707 for county clerks.

(d) With respect to the adjustment and settlement with the taxpayers, all errors of county taxes collected by the county clerk under the authority of this Act shall be refunded by the county clerk.

(e) Notice of any tax paid under protest shall be given to the county clerk, and the resolution authorized levy of the tax shall designate a county officer against whom suit may be brought for recovery.

SECTION 11. The proceeds of the tax authorized by this Act shall be allocated to and placed in the General Fund of Morgan County to be used for the purposes stated in Section 3 of this Act.

SECTION 12. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SECTION 13. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Morgan County. Its approval or non-approval shall be proclaimed by the presiding officer of the county legislative body and certified by the presiding officer of the county legislative body to the Secretary of the State.

SECTION 14. For the purpose of approving or rejecting the provisions of this Act, it shall become effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 13.